

Hunter
Becknell
Garrison

August 23, 1954
Letter Opinion
No. 54-216-L

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ARIZONA ATTORNEY GENERAL

Mr. George Bushnell, Director
Division of Insurance
Arizona Corporation Commission
State Building
Phoenix, Arizona

Re: Contract provision of
Reinsurance Agreement

Dear Mr. Bushnell:

You have orally requested our opinion as to whether or not you should approve certain paragraphs set forth in a Reinsurance Contract submitted to you for your approval.

These paragraphs read as follows:

"(b) All assessments or premiums under the reinsurance certificate and the policy reinsured, including all assessments now accrued or authorized under the terms of said policy but which Farmers has not levied prior to the effective date of this agreement, shall be levied by and payable to Western and divided between the mortuary or benefit fund and the expense or operating fund only in accordance with the laws of the State of Texas, the rules and regulations of the Board of Insurance Commissioners of the State of Texas, and the by-laws of Western which are now in effect or which may hereafter be amended or adopted.

(c) The reinsurance certificate, this agreement, the by-laws of the Western now in effect and as they may hereafter be amended or adopted, the laws of the State

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of Texas, and the rules and regulations of the Board of Insurance Commissioners of the State of Texas, shall supersede all conflicting provisions, if any, contained in the policies reinsured hereunder."

The Reinsurance Certificate also contains a provision similar to the paragraphs quoted above.

Sections 61-1017, and 61-1018, A.C.A. 1939, 1952 Cumulative Supplement, set forth certain required provisions and certain prohibited provisions concerning benefit insurance company certificates, and, Sections 61-1007, and 61-1009a, A.C.A. 1939, 1952 Cumulative Supplement, provides for a distribution of assessments or premiums to a mortuary fund and to a deposit for the protection of members.

The above-quoted paragraphs contemplate that the by-laws of an insurance company and the laws of the State of Texas, and the rules and regulations of the Board of Insurance Commissioners of the State of Texas, may supersede Arizona statutory requirements.

Therefore, it is our opinion that you should not approve the foregoing paragraphs.

Yours very truly,

JEH:jlb

JAMES E. HUNTER
Assistant to the
Attorney General